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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/933,576	08/21/2001	Mark Hugo Martens		5667

7590 08/26/2003
Mark H. Martens
3258 Peace Valley Lane
Falls Church, VA 22044

EXAMINER

MARKS, CHRISTINA M

ART UNIT	PAPER NUMBER
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3713

DATE MAILED: 08/26/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of Abandonment

Application No.

09/933,576

Examiner

C. Marks

Applicant(s)

MARTENS, MARK HUGO

Art Unit


3713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 20 December 2002.
 - (a) ☒ A reply was received on 24 June 2003 (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of 3 month(s)) which expired on 20 June 2003.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:

The amendment received by the Office on 24 June 2003 does not constitute a timely filed reply as the reply period has expired. The response is thus determined to be late and beyond the allocated time period.


Teresa Walberg
Supervisory Patent Examiner
Group 3700

Information Regarding this
Application is Attached in the
Detailed Action

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

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DETAILED ACTION

The response filed 24 June 2003 is not entitled to the benefits of 37 CFR 1.8 or 1.10 since it contains no certificate of mailing or Express Mail date. Regarding 37 C.F.R. §1.8, the response was not properly addressed as set out in §1.1(a) and the correspondence did not include a certificate of mailing for each correspondence stating the date of deposit. Further, regarding 37 C.F.R. §1.10, the correspondence was not received by the USPTO by "Express Mail Post Office to Addressee." The response was sent by first class mail. Therefore because Express Mail was not used as the means to deposit the response, the date of deposit with the USPS cannot be used. Therefore as the conditions outlined by 37 C.F.R. §1.8 and 37 C.F.R. §1.10 have not been met, the date of receipt in the U.S. Patent and Trademark Office has been used to determine the timeliness of the paper.

No extension of time has been applied to this current Application. Regardless, Applicant's reply to the Office Action of 20 December 2003 was received in the Patent and Trademark Office on 24 June 2003, which is after the expiration of the period for reply set in the last Office Action. Since no time remains for applicant to obtain an extension (6 months have passed) of the period for reply by filing a petition under 37 CFR 1.136(a), this application is *abandoned*. Applicant is advised that the abandonment of this application may only be overcome by filing a petition to revive under 37 CFR 1.137. A petition to revive may be appropriate if applicant's failure to reply was either unavoidable or unintentional, as set forth below.

A. Failure to reply was unavoidable.

A petition to revive an abandoned application on the grounds that the failure to reply was unavoidable (37 CFR 1.137(a)) must be accompanied by: (1) the required reply (which has been filed); (2) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; (3) any terminal disclaimer required pursuant to 37 CFR 1.137(c); and (4) the \$55.00 petition fee as set forth in 37 CFR 1.17(l). No consideration to the substance of a petition will be given until this fee is received.

The showing requirement can be met by submission of statements of fact establishing that the delay in filing the reply was unavoidable, as well as inadvertent. This must include: (1) a satisfactory showing that the cause of the delay resulting in failure to reply in timely fashion to the Office action was unavoidable; and (2) a satisfactory showing that the cause of any delay during the time period between abandonment and filing of the petition to revive was also unavoidable.

A terminal disclaimer and the \$55.00 terminal disclaimer fee is required under 37 CFR 1.137(c) if the application is: (1) a design application, (2) a utility application filed before June 8, 1995, or (3) a plant application filed before June 8, 1995. The terminal disclaimer must dedicate to the public a terminal part of the term of any patent granted the application equivalent to the period of abandonment of the application, and must also apply to any patent granted on any application containing a specific reference under 35 U.S.C. 120, 121 or 365(c) to the application for which revival is sought.

A petition to revive an abandoned application on the grounds that the failure to reply was unintentional (37 CFR 1.137(b)) must be accompanied by: (1) the required reply (which has been filed); (2) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; (3) any terminal disclaimer required pursuant to 37 CFR 1.137(c) (see above discussion); and (4) the \$650.00 petition fee as set forth in 37 CFR 1.17(m). No consideration to the substance of a petition will be given until this fee is received. The Director may require additional information where there is a question whether the delay was unintentional.

The required items and fees must be submitted promptly under a cover letter entitled “Petition to Revive.”

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 308-6916
Attn: Office of Petitions

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By hand: Crystal Plaza 4, Room 3C23
2201 South Clark Place
Arlington, VA 22202

Telephone inquiries with respect to this matter should be directed to the Office of Petitions Staff at (703) 305-9282. For more detailed information, see MPEP § 711.03(c).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Marks whose telephone number is (703)-305-7497. The examiner can normally be reached on Monday - Thursday (7:30AM - 5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa J Walberg can be reached on (703)-308-1327. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1148.

cmm
cmm
August 21, 2003

T. Walberg
Teresa Walberg
Supervisory Patent Examiner
Group 3700